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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of Michael Sharon

Serial No. 10/755,161

)Group Art Unit:3611

Filed: 1/12/2004

)Examiner: Brian K. Green

For: Rotational Filing System For Compact Disks

Commissioner for Patents
P.O. Box 1450
Alexandria, Va. 22313-1450
April 24, 2006

Letter

Sir:

Responsive to the 4/04/06 Notification of Non-Compliant Appeal Brief, attached hereto please find a new (B)Table Of Contents and correction sheets numbered 4, 5-6, 10 and 11(a)-11(b) to replace the original (B)Table Of Contents and the defective original sheets numbered 4, 5-6, 10 and 11, respectively, of the non-compliant Appeal Brief filed on 1/23/06. Also enclosed herewith please find a copy of the Amended Appeal Brief integrating the foregoing replacement sheets in lieu of the original sheets.

Respectfully submitted,

Howard R. Greenberg

Howard R Greenberg
Reg. No. 26,171
6801 Southpoint Drive
Dallas, Texas 75248
Tel. No. 972-931-6880

Certificate Of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Va. 22313-1450 on April 24, 2006.

Howard R. Greenberg
Howard R. Greenberg



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(F) STATUS OF AMENDMENTS

Three amendments after final rejection were filed on 12/19/05, 1/7/06 and 1/23/06. None of these amendments were entered and consequently are not addressed in this appeal brief.

(G) SUMMARY OF CLAIMED SUBJECT MATTER

The invention is a rotational filing system for easily storing and then locating and retrieving CD and DVD compact disks. It is succinctly described in the specification at lines 99-109 of page 5 referencing figures 1, 10 and 11 which depict, respectively, the rotational filing system 10, the carrier pouch 24 and the carrier pouch unit 72 consisting of the carrier pouch 24 together with its associated compact disk 14. For the convenience of the Board members hearing this appeal, figures 1, 10 and 11 are attached hereto, under (K) Evidence, modified to display the specification names for their numbered elements.

Independent Claim 11

The rotational system 10 (pg.5, line 99; fig.1) comprises a plurality of disk- shaped pouches 24 (pg.5, line101; figs.10-11), each for containing an individual compact disk 14 (pg.5, line100; figs.1&10) and having an indicia tab 16 (pg.5, line 100; figs.1,10 & 11) for identifying that compact disk 14 to afford easily storing and then locating and retrieving it from a means for support 20 (fig.1) which rests on a horizontal surface wherein each pouch 24 and its associated compact disk 14 are stored along with the other pouches 24 and their associated compact disks 14. The pouches 24 are aligned with one another along a common axis 18 (pg.5, line105; fig.1) of the housing (20) which allows them to be laterally rotated so that when the indicia tabs 16 are viewed along the common axis (18) by the user, the front tabs can be rotationally displaced thereby affording the user visual access to the back tabs.

Dependent Claim 12

The means for support 20 which rests on a horizontal surface of independent claim 11 is a housing 20 (fig.1) and the common axis 18 of independent claim 11 is parallel to the horizontal surface (pg.5, line104).

Independent Claim 14

The disk-shaped pouch 24 (pg.5, line101; figs.10-11) comprises a first disk-shaped side 22 (pg.5, line101; fig.10) and a second side 12 (pg.5, line100; figs.10 & 11) for containing a compact disk14 (pg.5, line100; figs.1 & 10) with a center hole. The disk-shaped side 12 has at least one tab 16 (pg.5; line 100; figs.1,10 & 11) for identifying the compact disk 14 which extends beyond the periphery 26 (pg.7, line136; figs.1,10 & 11) of disk 14.

Dependent Claim 15

The pouch 24 of independent claim 14 has a center hole (fig. 11) congruent to the center hole of compact disk 14.

(J) CLAIMS APPENDIX

11) A rotational filing system for storing and retrieving a compact disk, comprising: a plurality of disk-shaped pouches and a means for support which rests on a horizontal surface, wherein each disk-shaped pouch included in said plurality is adjacent to one another and rotates about a common axis of said support means, each said disk-shaped pouch having at least one tab for including indicia in reference to said associated compact disk and extending beyond the periphery of said associated compact disk..

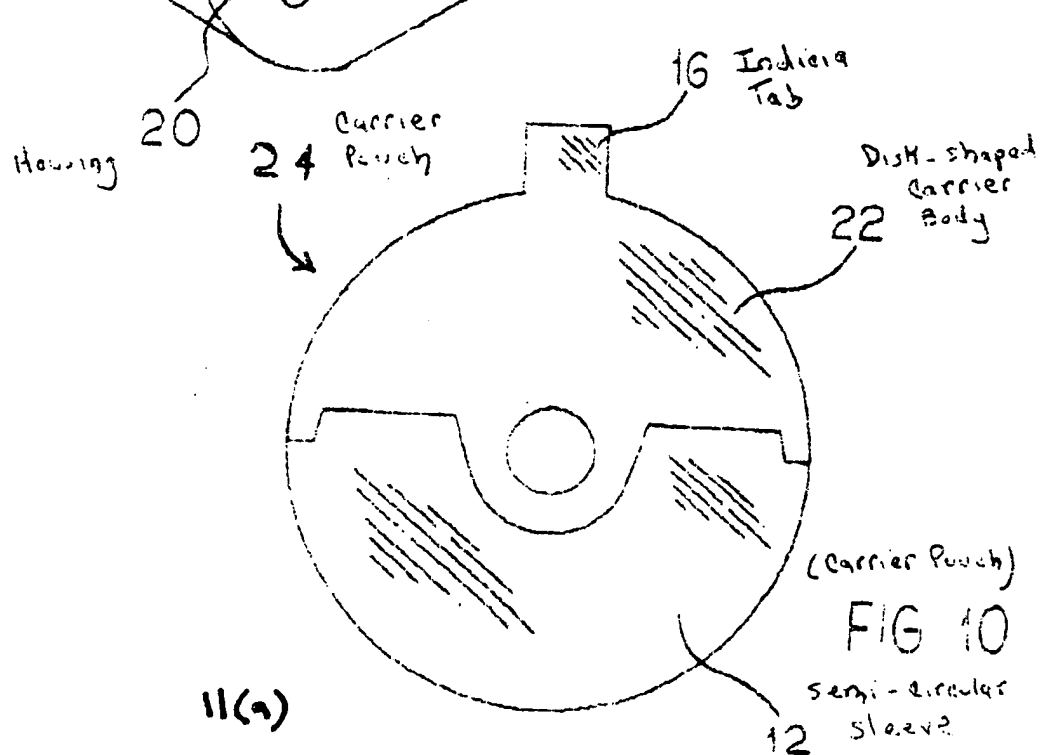
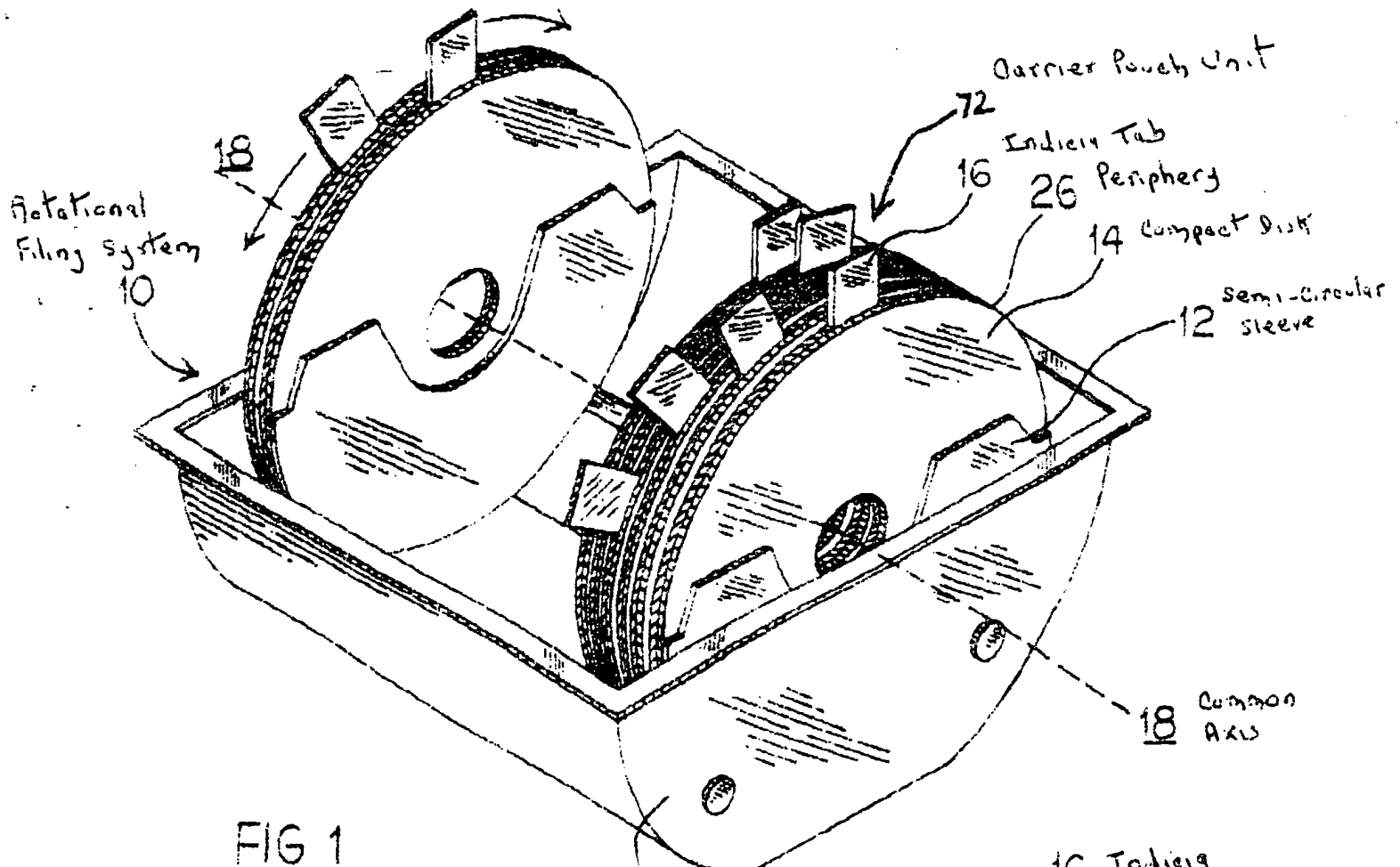
12) The rotational filing system of claim 11 wherein said means for support is a housing which includes said plurality of disk-shaped pouches, said housing being adapted for the free rotation of said plurality of disk-shaped pouches about said common axis and said common axis is parallel to said horizontal surface.

14) A disk-shaped pouch, comprising: a first disk-shaped side and a second side that are attached evenly to form a pouch for the containment and removal of an associated compact disk having a center hole, said first disk-shaped side having at least one tab for including indicia in reference to said compact disk and extending beyond the periphery of said associated compact disk.

15) The disk-shaped pouch of claim 14 wherein said pouch has at least one center hole that is congruent to the center hole of said compact disk while said pouch contains said compact disk



(K) EVIDENCE APPENDIX



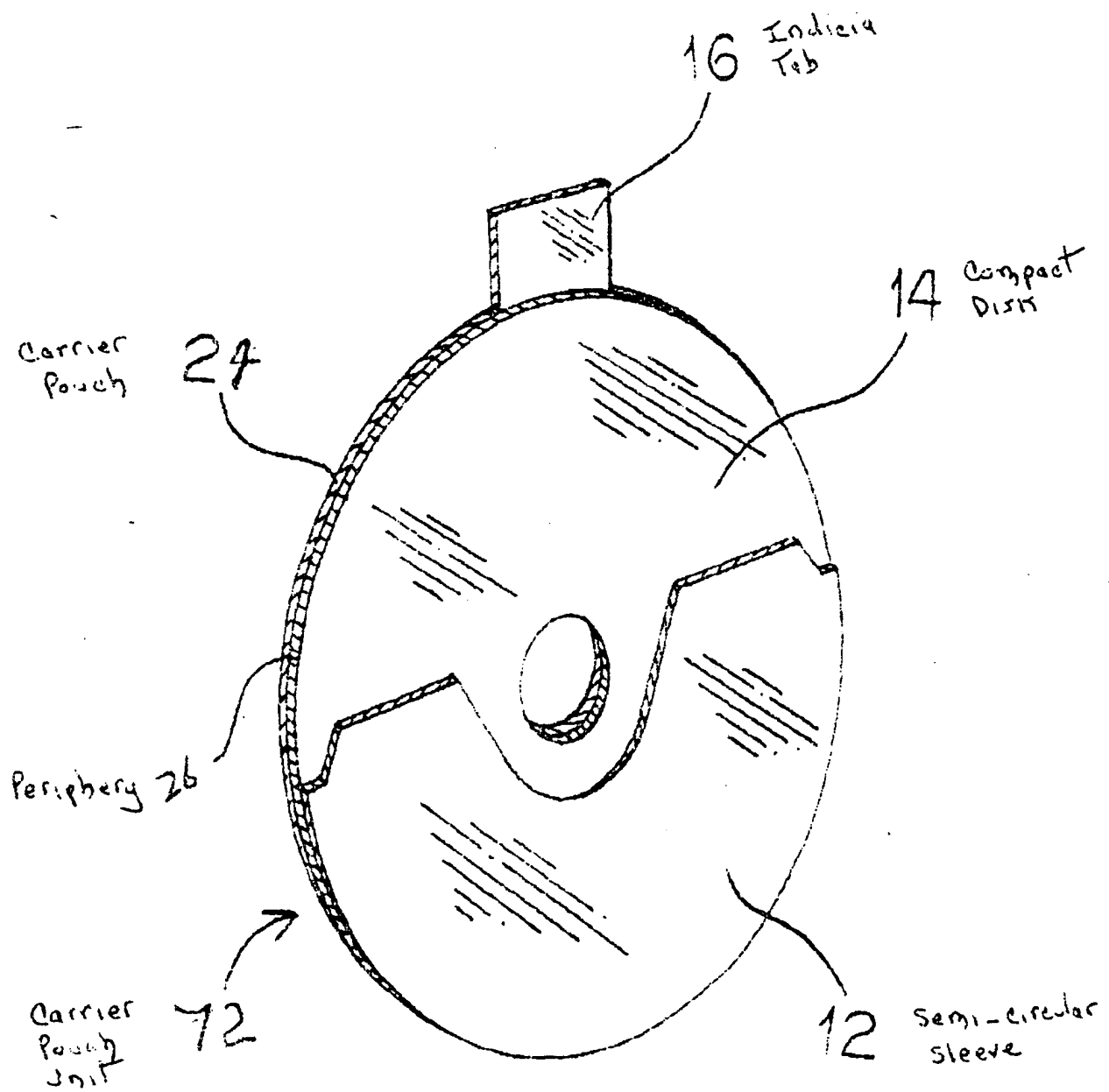


FIG 11
(Carrier Pouch with Compact Disk)



(A) IDENTIFICATION

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Amended Appeal Brief

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(C) REAL PARTY IN INTEREST

The real party in interest is Michael Sharon who is named in the caption.

(D) RELATED APPEALS AND INTERFERENCES

None

(E) STATUS OF CLAIMS

Of the submitted fifteen claims, Claims 1-10 and Claim 13 were, respectively, cancelled and withdrawn. Independent Claims 11 and 14 and Claims 12 and 15, respectively dependent thereon, were finally rejected and are the subject of this appeal.

(F) STATUS OF AMENDMENTS

Three amendments after final rejection were filed on 12/19/05, 1/7/06 and 1/23/06. None of these amendments were entered and consequently are not addressed in this appeal brief.

(G) SUMMARY OF CLAIMED SUBJECT MATTER

The invention is a rotational filing system for easily storing and then locating and retrieving CD and DVD compact disks. It is succinctly described in the specification at lines 99-109 of page 5 referencing figures 1, 10 and 11 which depict, respectively, the rotational filing system 10, the carrier pouch 24 and the carrier pouch unit 72 consisting of the carrier pouch 24 together with its associated compact disk 14. For the convenience of the Board members hearing this appeal, figures 1, 10 and 11 are attached hereto, under (K) Evidence, modified to display the specification names for their numbered elements.

Independent Claim 11

The rotational system 10 (pg.5, line 99; fig.1) comprises a plurality of disk- shaped pouches 24 (pg.5, line101; figs.10-11), each for containing an individual compact disk 14 (pg.5, line100; figs.1&10) and having an indicia tab 16 (pg.5, line 100; figs.1,10 & 11) for identifying that compact disk 14 to afford easily storing and then locating and retrieving it from a means for support 20 (fig.1) which rests on a horizontal surface wherein each pouch 24 and its associated compact disk 14 are stored along with the other pouches 24 and their associated compact disks 14. The pouches 24 are aligned with one another along a common axis 18 (pg.5, line105; fig.1) of the housing (20) which allows them to be laterally rotated so that when the indicia tabs 16 are viewed along the common axis (18) by the user, the front tabs can be rotationally displaced thereby affording the user visual access to the back tabs.

Dependent Claim 12

The means for support 20 which rests on a horizontal surface of independent claim 11 is a housing 20 (fig.1) and the common axis 18 of independent claim 11 is parallel to the horizontal surface (pg.5, line104).

Independent Claim 14

The disk-shaped pouch 24 (pg.5, line101; figs.10-11) comprises a first disk-shaped side 22 (pg.5, line101; fig.10) and a second side 12 (pg.5, line100; figs.10 &11) for containing a compact disk14 (pg.5, line100; figs.1 & 10) with a center hole. The disk-shaped side 12 has at least one tab 16 (pg.5; line 100; figs.1,10 & 11) for identifying the compact disk 14 which extends beyond the periphery 26 (pg.7, line136; figs.1,10 & 11) of disk 14.

Dependent Claim 15

The pouch 24 of independent claim 14 has a center hole (fig. 11) congruent to the center hole of compact disk 14.

(H) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Each of the four claims was rejected for obviousness under 35USC103(a) based on combining two or three of the following five references: Reinhold, Balzer, Kawachi, Casey and Kohn.

Issues raised are whether 35USC103(a) precludes the patenting of : 1) claims 11 and 12 over Reinhold in view of Balzer in further view of either Kawachi or Casey, 2) claim 14 over Reinhold in view of Balzer and 3) claim 15 over Reinhold in view of Balzer in further view of Kohn.

(I) ARGUMENT

Rejection of Claims 11 & 12 Under 35USC103(a) Over Reinhold In View Of Balzer In Further View Of Either Kawachi Or Casey

The examiner cites Reinhold, Balzer and Kawachi or Casey for teaching, respectively, the disk-shaped pouch (24), the indicia tab (16) and the rotationability of the pouch (24) about a common axis (18) limitations of claims 11 and 12. It is respectfully submitted that none of these references teach, suggest or imply the rotationability of a pouch (or anything similar) about a common axis. Reinhold discloses a single circular record case having a spacer for holding one or two records which is not intended for rotation and which disclosure alludes in no way whatsoever to any type of filing system and Balzer discloses a rectangular sleeve which cannot be rotated and employs tabs which require thumbing through. As for the references cited by the examiner for the rotationability of the pouch about a common axis, Casey discloses a notched record holder wherein a record is snugly inserted into an individual notch (col.2, line 64) without any rotation and Kawachi discloses rotationally pivoting a reel/tape cannister to remove it from its storage rack (col.3, lines 51-58) which does not entail any rotation about a common axis.

Regarding the indicia tab, the examiner considers it obvious to add to the circular case of Reinhold the tab of Balzer, notwithstanding that Reinhold neither teaches nor suggests a filing system for storing, locating and retrieving a plurality of containers, thus dispensing with the need for indicia tabs. Further eliminating the need for a Reinhold tab is the placement on the record case itself information about its record contents (lines15-18). Why would one wish to

employ an indicia tab in connection with a single record case which already displays the indicia information on its side and teaches away from the need for the tab? The examiner, combining Balzer's rectangular sleeve tabs with Reinhold's single record case, says it would be obvious to one skilled in the art to achieve the ease and convenience of applicant's compact disk rotational filing system. It is respectfully submitted that since the Reinhold and Balzer references, when fairly read, do not suggest their combination as posited by the examiner, the foregoing conclusion can only be arrived at through the benefit of hindsight employing appellant's disclosure which the CAFC has proscribed in numerous cases, e.g. In re Fine, 5 U.S.P.Q.2d 1599.

Combining the Reinhold and Balzer references with either Casey or Kawachi to establish rotationability of the pouches about a common axis (when neither Casey nor Kawachi discloses same) further detracts from the tenability of an obviousness rejection.

Rejection Of Claims 14 & 15 Under 35USC103(a) Over Reinhold In View Of Balzer

The examiner cites Reinhold and Balzer for teaching, respectively, the disk-shaped pouch (24) and indicia tab (16) limitations of claim 14. These references cannot properly be combined to render claim 14 obvious and unpatentable for the reasons already stated in the penultimate paragraph hereinabove. Claim 15 is dependent on claim 14 and is deemed patentable based on the patentability of claim 14.

(J) CLAIMS APPENDIX

11) A rotational filing system for storing and retrieving a compact disk, comprising: a plurality of disk-shaped pouches and a means for support which rests on a horizontal surface, wherein each disk-shaped pouch included in said plurality is adjacent to one another and rotates about a common axis of said support means, each said disk-shaped pouch having at least one tab for including indicia in reference to said associated compact disk and extending beyond the periphery of said associated compact disk..

12) The rotational filing system of claim 11 wherein said means for support is a housing which includes said plurality of disk-shaped pouches, said housing being adapted for the free rotation of said plurality of disk-shaped pouches about said common axis and said common axis is parallel to said horizontal surface.

14) A disk-shaped pouch, comprising: a first disk-shaped side and a second side that are attached evenly to form a pouch for the containment and removal of an associated compact disk having a center hole, said first disk-shaped side having at least one tab for including indicia in reference to said compact disk and extending beyond the periphery of said associated compact disk.

15) The disk-shaped pouch of claim 14 wherein said pouch has at least one center hole that is congruent to the center hole of said compact disk while said pouch contains said compact disk



(K) EVIDENCE APPENDIX

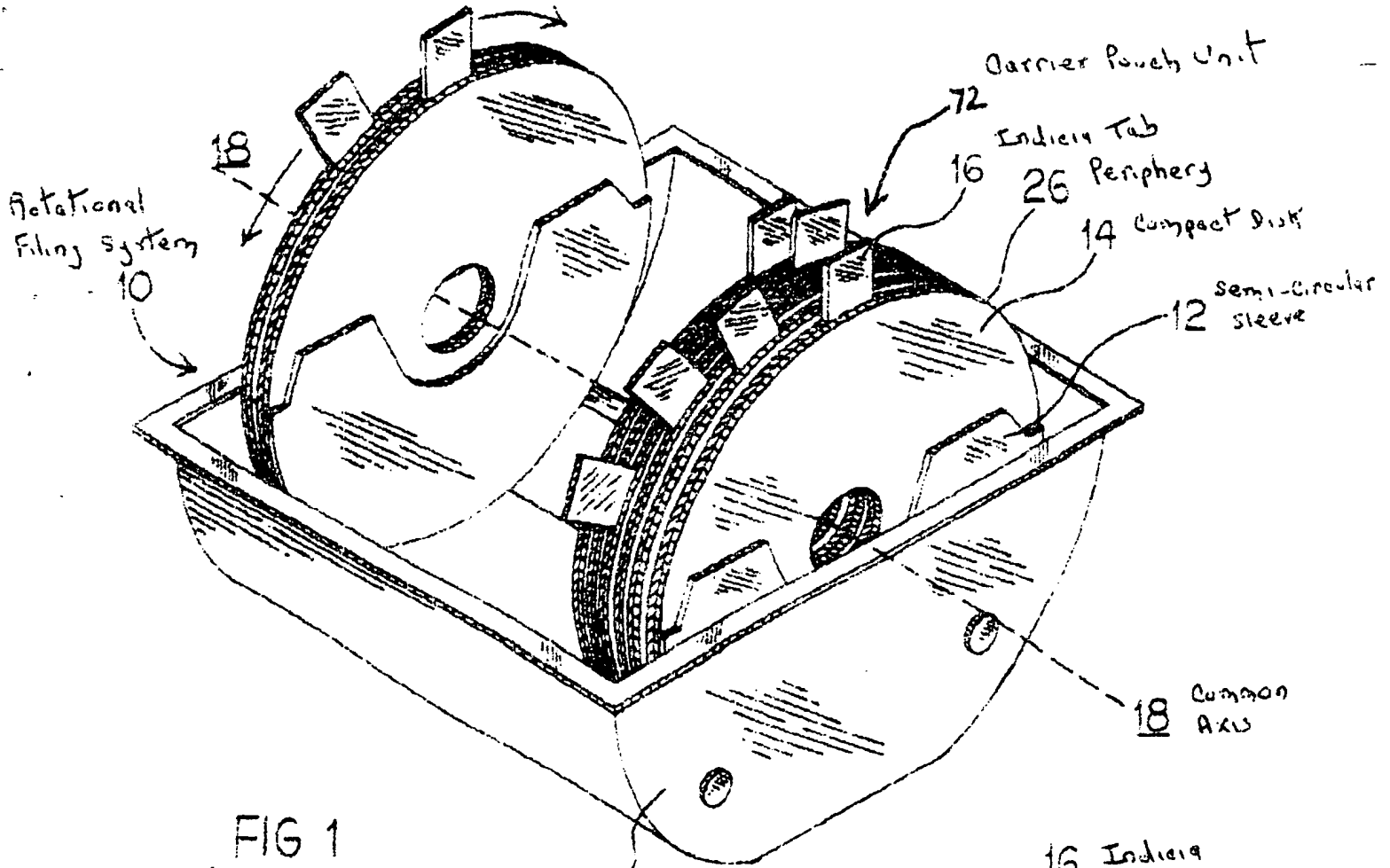


FIG 1
(System)

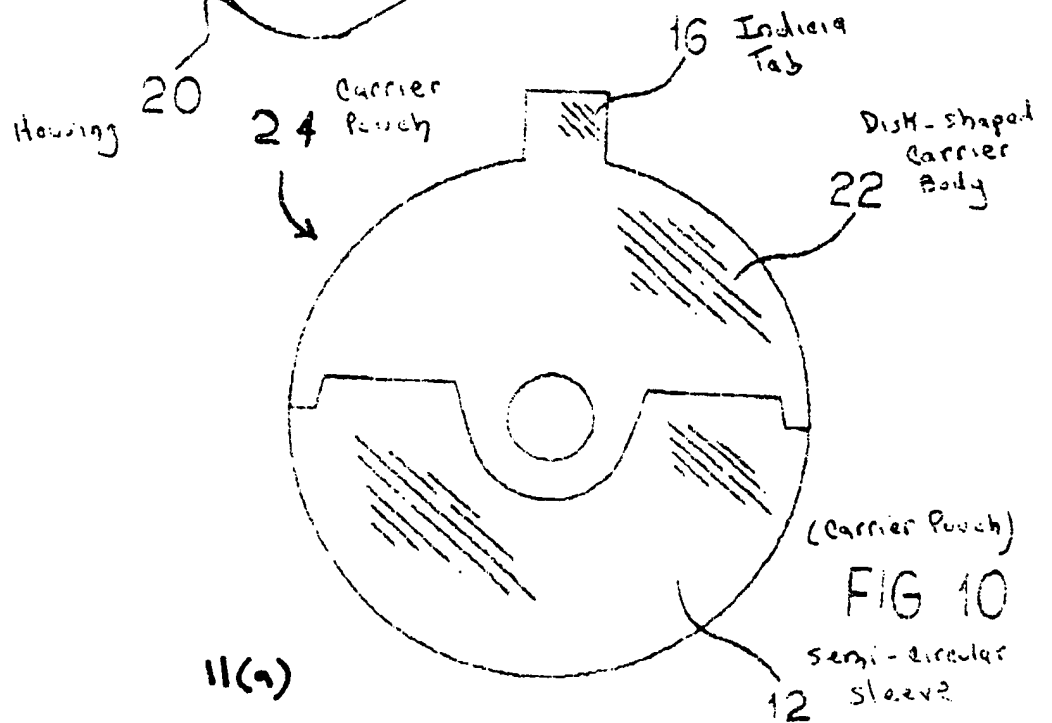


FIG 10

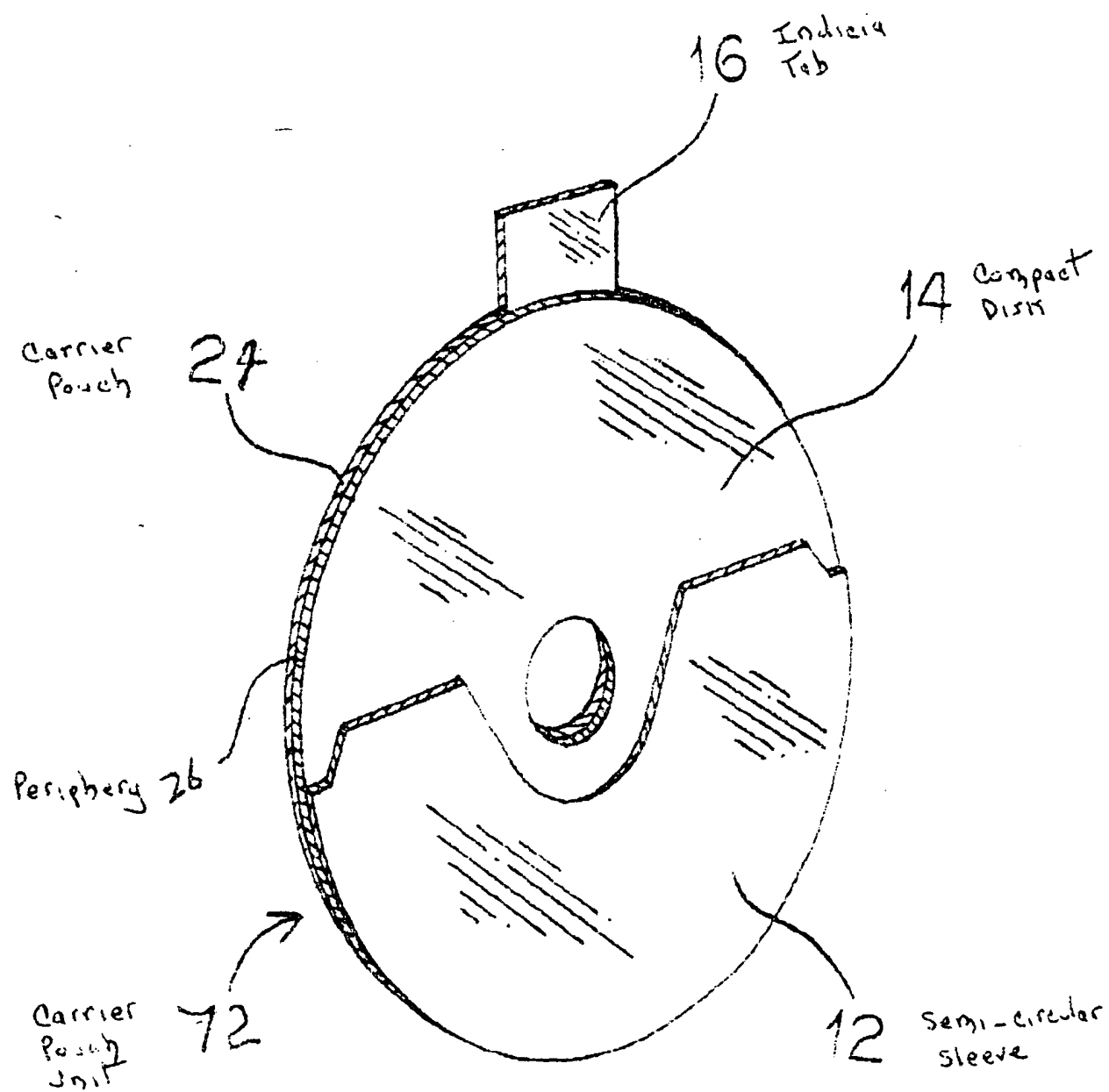


FIG 11
(Carrier Pouch with Compact Disk)

(L) RELATED PROCEEDINGS APPENDIX

None